



The City of San Diego

Staff Report

DATE ISSUED: 4/21/2021
TO: City Council
FROM: Purchasing & Contracting
SUBJECT: 2020 City of San Diego Disparity Study

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Council District(s): Citywide

OVERVIEW:

The Purchasing and Contracting Department (P&C) is pleased to provide the results of the 2020 Disparity Study with the purpose of identifying whether any gaps exist in the City's contracting with traditionally underrepresented groups and includes items for consideration to remedy any identified gaps.

PROPOSED ACTIONS:

This is an informational item.

DISCUSSION OF ITEM:

In August of 2019, City of San Diego (City) issued a formal request for (RFP) seeking a qualified and experienced consultant to develop and undertake a disparity study on behalf of the City. The purpose of the study was to identify whether any gaps exist in the organization's contracting with traditionally underrepresented groups and includes items for consideration to remedy those gaps. Three proposals were submitted in response to the RFP and were evaluated by a five-member evaluation committee, with BBC Research and Consulting (BBC) deemed the successful proposer.

BBC has worked with a wide variety of municipal and public-sector agencies including the Los Angeles Metropolitan Transportation Authority, the City of Virginia Beach and Caltrans. They have extensive experience conducting disparities studies and have done so for cities such as Denver, Boston and Indianapolis. Their methodology has been court-tested and approved by the Ninth Circuit Court of Appeals, the US Department of Transportation, the US Department of Justice and the US Congress.

In early 2020, BBC began their collection of data related to City contracts in the following three segments: construction; professional services; and goods and services. BBC reviewed prime contracts and subcontracts during the July 1, 2014 to June 30, 2019, study period. The intent of the study was to determine if minority business enterprise (MBE) and woman business enterprise (WBE) were statistically significantly underutilized in the award of City contracts. Under a fair and equitable system of awarding contracts, the portion of contract dollars awarded to MBE/WBEs should be relatively close to the proportion of available M/WBEs in the relevant market area.

The Disparity Study (Attachment 1) findings are presented in nine chapters, which are briefly described below:

- *Chapter 1: Introduction* presents an overview of the study's goals, scope, and study team members, and the study's methodology.
- *Chapter 2: Legal Analysis* presents the case law applicable to race- and gender-conscious programs and the legal standards necessary prior to implementation of such programs.
- *Chapter 3: Marketplace Conditions* presents quantitative and qualitative analyses that assess whether minorities, women, and minority- and woman-owned businesses face any barriers in San Diego County construction, professional services, and goods and other services industries.
- *Chapter 4: Collection and Analysis of Contract Data* provides an overview of the policies the City uses to award contracts and procurements.
- *Chapter 5: Availability Analysis* analyzes the availability of minority-, woman-, and service-disabled veteran-owned businesses that are ready, willing, and able to perform prime contracts and subcontracts on City contracts awarded in the areas of construction, professional services, and goods and other services.
- *Chapter 6: Utilization Analysis* presents information about the participation of minority-, woman-, and service-disabled veteran-owned businesses in construction, professional services, and goods and other services prime contracts and subcontracts that the City awarded during the study period.
- *Chapter 7: Disparity Analysis* compares the actual participation, or utilization, of minority-, woman-, and service-disabled veteran-owned businesses in prime contracts and subcontracts the City awarded during the study period with the percentage of contract dollars those businesses might be expected to receive based on their availability for that work.
- *Chapter 8: Program Measures* presents an assessment of the measures the City is currently using to encourage the participation of small businesses, minority-owned businesses, woman-owned businesses, and service-disabled veteran-owned businesses in its contracting, and an assessment of additional measures the organization could consider using in the future.
- *Chapter 9: Program Considerations* presents potential policies the City may adopt to enhance its procurement policies and procedures to increase participation by M/WBEs on City contracts.

Notable findings in the report include the documentation of the City's utilization of M/WBE and non-M/WBE contractors (both prime and sub) by industry, ethnicity, and gender over the study period. The study notes disparities within several ethnic and gender groups in each of the industries identified (construction, professional services, goods and services). The table below provides overall disparity indices by industry and by race/gender for City Contracts:

Disparity Indices by Industry and Race/Gender			
	Percent of Total Dollars		
Race/Gender	Construction 62%	Professional Services 31%	Goods & Other Services 7%
Total Minority- and Woman-owned	87.8	29.8	35.3
Non-Hispanic White Woman-owned	59.7	15.9	200+
All Minority-owned	107.9	69.9	16.9
Asian Pacific American-owned	57.9	141.2	200+
Black American-owned	154.4	123.5	0.0
Hispanic American-owned	107.8	45.4	12.4
Native American-owned	18.7	21.5	100.0
Subcontinent Asian American-owned	200+	200+	200+

If the available M/WBE contractors are underutilized, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event that is less probable. A test is performed to determine if a finding of underutilization is statistically significant. BBC used the following formula to calculate the disparity index:

$$\frac{\% \text{ participation}}{\% \text{ availability}} \times 100$$

A disparity index of 100 indicates parity between actual participation and availability. Finally, a disparity index of less than 80 indicates a substantial disparity between participation and availability. If a group is found to have a disparity of less than 80, the group is considered to have been substantially underutilized relative to its availability.

Before a government agency, such as the City, can adopt a race and gender conscious program as a remedy for discrimination identified as statistically significant, applying the strict scrutiny standards set forth in the United States Supreme Court ruling in *City of Richmond v. J.A. Croson Co.*¹ (Croson) and related case law. Further, Proposition 209, which California voters passed in 1996, amended Section 31, Article 1 of the California Constitution prohibiting discrimination and the use of race- and gender-based preferences in public contracting, public employment, and public education. Proposition 209 prohibits government agencies in California, including the City, from using race- or gender-conscious measures when awarding state- and locally funded contracts.

¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

The report provides several considerations to help bolster the City's current race- and gender-neutral program, the Small Local Business Enterprise (SLBE) program with the intent of increasing M/WBE participation. Some of the recommendations include:

1. **Creation of an Overall Aspirational Goal.** The City could develop its own goal for the participation of minority- and woman-owned businesses in its contracts and procurements.
2. **Creating Contract Specific Goals.** Disparity analysis results indicated that various groups of minority- and woman-owned businesses showed substantial disparities on key sets of contracts and procurements that the City awarded during the study period. The City could set participation goals on individual contracts based on the availability of minority- and woman-owned businesses for the types of work involved with the project. Due to the limitations set by Proposition 209, the City would have to ensure that its use of contract specific goals meets the *strict scrutiny* standard of constitutional review, including showing a compelling governmental interest for their use and ensuring that their use is narrowly tailored.

3. Race- and Gender-Neutral Measures

- a. **Subcontracting Goals.** The City could consider expanding the use of such mandatory goals, as currently incorporated in construction contracts, to goods, services, and professional services contracts and procurements which might help address substantial disparities.
- b. **Small Business Set Asides.** The City might consider setting aside select small goods and services prime contracts for small business bidding to encourage the participation of those businesses, including many minority- and woman-owned businesses, as prime contractors.
- c. **Unbundling Large Contracts.** To further encourage the participation of all small businesses, including many minority- and woman-owned businesses, in its work, the City should consider making efforts to unbundle relatively large prime contracts, and even subcontracts, into several smaller contract pieces.
- d. **Bonding Assistance.** The City should consider offering bonding assistance to small businesses pursuing City work and should evaluate the value of the bonds required for minor public works projects, which are generally set aside for certified SLBEs and ELBEs.

Additional considerations are found in Chapter 9 of Attachment 1. Staff will work with the Council offices to determine which recommendations may be the most effective in achieving the City's goals to increase participation by minority- and woman-owned businesses. Final recommendations will be brought forth to the Budget & Government Efficiency Committee, and subsequently City Council for full adoption at a later date.

City Strategic Plan Goal(s)/Objective(s):

Goal # 3: Create and sustain a resilient and economically prosperous City.

Objective # 3: Diversify and grow the local economy.

Fiscal Considerations:

N/A

Charter Section 225 Disclosure of Business Interests:

N/A

Environmental Impact:

N/A

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

- 1) Authorization to Award Consultant Contract presented to Budget & Government Efficiency committee on November 13, 2019. Yea – Barbara Bry, Chris Cate, Monica Montgomery, Vivian Moreno
- 2) Authorization to Award Consultant Contract presented to Council on December 9, 2019. Yea: Barbara Bry, Jennifer Campbell, Chris Ward, Monica Montgomery, Mark Kersey, Chris Cate, Scott Sherman, Vivian Moreno, Georgette Gómez

Key Stakeholders and Community Outreach Efforts:

Key Stakeholders include City of San Diego Businesses and Residents.

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